IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 14.3.2005

Coram

THE HONOURABLE MR. MARKANDEY KATJU, THE CHIEF JUSTICE
and
THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

Writ Appeal No.3222 of 2002

Indian Oil Corporation Ltd.
rep. by its Executive Director
Southern Region
139 Nungambakkam High Road,
Madras-600 034. .. Appellant

versus

1. Indian Oil United Contract
Labour Union
rep. by its Joint Secretary
V. Krishnamoorthy
79 Thirumangai Manan Street
Sundaram Colony
East Tambaram
Madras - 600 059.

2. The Union of India
rep. by its Secretary
Labour and Employment
New Delhi.

3. The Asst. Labour Commissioner
(Registration) (Central)

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Sastri Bhavan,
20, Haddows Road,
Madras-6.

4. Polite Maintenance Services
rep. by its Proprietor
J.A. Victor
28 Murali Street
Mahalingapuram
Madras - 600 034. .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order passed in Writ Petition No.18992 of 1996 dated 27.9.2002.

for appellant : Mr. AL. Somayaji
Senior Counsel
for M/s. T.S. Gopalan & Co.

for respondent 1: Mr. R. Natarajan

for respondents 2 and 3 : Mr. S. Manikumar
Sr. Central Govt.
Standing Counsel

for respondent 4: No appearance

JUDGMENT

(Judgment of the Court was delivered by
The Honourable The Chief Justice)

This writ appeal has been filed against the impugned order of the learned single Judge dated 27.9.2002.

2. We have heard Mr. AL. Somayaji, learned Senior Counsel for the appellant, Mr. R. Natarajan, learned counsel for the first respondent and Mr. S. Manikumar, learned Senior Central Government Standing Counsel for the respondents 2 and 3. None has appeared for the fourth respondent although the name of the counsel for the fourth respondent has been shown in the cause list.

3. The writ petitioner is a Trade Union and in the writ petition it prayed for a writ of Certiorarified Mandamus to

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quash the Registration Order dated 30.11.1992 and direct the third respondent Indian Oil Corporation to consider the claim of the workers of the petitioner Union for absorption and regularisation according to law.

4. The facts in detail are given in the judgment of the learned single Judge and hence we are not repeating the same. The learned single Judge in paragraph 16 of his judgment has directed the respondent Indian Oil Corporation to continue to engage the 32 workers whose names are found in the Annexure to the affidavit filed in support of the writ petition. He has further directed that their engagement shall be uninterrupted till their services are regularised or absorbed.

5. In our opinion, the impugned judgment of the learned single Judge cannot be sustained. As held by a Constitution Bench decision of the Supreme Court in Steel Authority of India vs. National Union Waterfront Workers (JT 2001 (7) SC 268 = 2001 (7) SCC 1) the contract labourers are not entitled to get automatic absorption even if there is a notification under Section 10(1) of the Contract Labour (Regulation and Abolition) Act 1970 and these employees have to approach the Industrial Tribunal/Labour Court for adjudication of their claim.

6. In Writ Appeal Nos. 1048 to 1052 and 1092 to 1094 of 1998 (The Airport Officer, Salem Airport, Salem and another vs. M. Kalaikovan and others) dated 14.3.2005, we have followed the aforesaid decision of the Supreme Court. In view of the above, in our opinion, the judgment of the learned single Judge cannot be sustained. The workers concerned should have raised an Industrial Dispute with regard to their claim for regularisation instead of directly approaching this Court. As regards the cancellation of the Registration, there is a right of appeal under Section 15 of the Contract Labour (Regulation and Abolition) Act 1970. Hence the workers had an alternative remedy. The writ petition should not have been entertained at all. In view of the above, the writ appeal is

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allowed and the impugned judgment is set aside. The writ petition is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Vu

To
1. The Secretary,
Union of India
Labour and Employment
New Delhi.

2. The Asst. Labour Commissioner
(Registration) (Central)
Sastri Bhavan,
20, Haddows Road,
Madras-6.

3.The Executive Director,
Indian Oil Corporation Limited,
Southern Region, 139, Nungambakkam
High Road,
Madras-34

+1cc to M/S T.S.Gopalan, Advocate Sr.No.11973

+1cc to Mr. S. Manikumar, SCGSC SR.No.12051

AK(CO)
kaa 18.03.05

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